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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,726	09/30/2003	Joshua S. Allen	RSW920030148US1 (116)	6352
46320 7590 09/12/2008 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487				
EXAMINER DONABED, NINOS J				
ART UNIT 2144		PAPER NUMBER		
MAIL DATE 09/12/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/675,726

Applicant(s)

ALLEN ET AL.

Examiner

NINOS DONABED

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

This application has been reassigned to another examiner. The examiner has carefully evaluated the instant claims in view of the prior art. This action is in response to Applicants amendment dated 07/12/2008. Claims 2-3 have been amended. Claims 1-23 are pending in the application.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. Independent claim 1 directed to "A service level agreement (SLA) breach value estimator comprising: a communicative coupling...; and a further communicative coupling...; and at least one SLA breach value estimation process" is nonstatutory as it does not recite any hardware elements that enable the claimed process to realize its functionality as a computer component.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Betge-Brezetz et al. (U.S. Pat. App. Pub. 2005/0177629), hereinafter referred to as Betge.

6. Regarding claim 1, Betge disclosed a method and system comprising a communicative coupling to data produced for at least one resource ("data representative of usage of resources", paragraph [0010]); and, a further communicative coupling to a user interface through which an SLA breach value estimate is proposed ("network evolution planning proposal", paragraph [0010], [0011]; "user interface", paragraph [0017]; "a graphical user interface...for displaying the planning proposals generated", paragraph [0045]); and, at least one SLA breach value estimation process

selected from the group consisting of an aggregated process, a specific customer process, a customer resource subset process, and a predictive process (paragraph [0013]-[0015]).

7. Regarding claim 2, Betge disclosed the method and system wherein the estimator is disposed within an SLA builder (paragraph [0018], [0042]).

8. Regarding claim 3, Betge disclosed the method and system further comprising a graphical user interface configured to render a chart of resource data over time derived from said produced data along with an indication of a current SLA breach value setting a proposed SLA breach value setting (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).

9. Regarding claim 4, Betge disclosed the method and system wherein said proposed SLA breach value setting comprises a programmatic configuration for being graphically modified to establish a new SLA breach value setting (paragraph [0017], [0045], [0048], [0051]).

10. Regarding claim 5, Betge disclosed the method and system further comprising a compliance process disposed within said SLA breach value estimation process, said compliance process comprising logic for proposing an SLA breach value estimate computed to render probable SLA compliance for a percentage of time equivalent to a specified compliance value (paragraph [0057]-[0061]); and, a compliance interface through which said compliance value can be specified (paragraph [0017], [0045], [0048], [0051]).

11. Regarding claims 6 and 15, Betge disclosed a method and system comprising processing resource data to identify an acceptable SLA breach value ("data representative of usage of resources", paragraph [0010]); and, displaying said acceptable SLA breach value through a user interface (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).
12. Regarding claims 7 and 16, Betge disclosed the method and system wherein said processing comprises identifying a best practices SLA breach value based upon resource data for an aggregation of customers ("network evolution planning proposal", paragraph [0010], [0011]; "aggregation", paragraph [0051]).
13. Regarding claims 8 and 17, Betge disclosed the method and system wherein said processing comprises identifying an average SLA breach value for a specific customer (paragraph [0049]-[0050]).
14. Regarding claims 9 and 18, Betge disclosed the method and system wherein said identifying comprises identifying an average SLA breach value for a specific customer for a specific resource (paragraph [0049]-[0050]).
15. Regarding claims 10 and 19, Betge disclosed the method and system wherein said processing comprises identifying an SLA breach value trend based upon past measured performance data (paragraph [0044]-[0049]); and, predicting a future SLA breach value based upon said trend (paragraph [0044]-[0049]).
16. Regarding claims 11 and 20, Betge disclosed the method and system wherein said processing further comprises increasing said acceptable SLA breach value by a fixed proportion (paragraph [0058]).

17. Regarding claims 12 and 21, Betge disclosed the method and system further comprising rendering a chart of said resource data against a period of time in a graphical user interface (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]); and overlaying an indicator both of a current SLA breach value and a proposed SLA breach value about said rendered chart (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).

18. Regarding claims 13 and 22, Betge disclosed the method and system further comprising permitting the graphical manipulation of said indicator of said proposed SLA breach value (paragraph [0017], [0045], [0048], [0051]); and, establishing an SLA breach value based upon said graphical manipulation (paragraph [0017], [0045], [0048], [0051]).

19. Regarding claims 14 and 23, Betge disclosed the method and system further comprising establishing a compliance percentage (paragraph [0057]-[0061]); and, computing said acceptable SLA breach value so that SLA compliance is probable for a percentage of time equivalent to said compliance percentage (paragraph [0057]-[0061]).

Response to Arguments

Applicant's arguments filed 07/12/2008 have been fully considered but they are not persuasive.

- The following are the Examiner's observations in regard thereto regarding the arguments to the rejections under 35 U.S.C. 112 second paragraph.

Examiner has withdrawn the rejection to claim 15 for the sole reason that Applicant states in the arguments that the "machine" refers back to the "machine readable storage". If Applicant changes the interpretation of the "machine" to meaning something other than the "machine readable storage" the rejection will be presented again.

- The following are the Examiner's observations in regard thereto regarding the arguments to the rejections under 35 U.S.C. 101.

Examiner maintained the rejection to Claims 1-5 because there is no mention in the specification as to the communicative coupling being a device and not an abstract idea or software. The Examiner further asks the Applicant to point out in the specification where the communicative coupling refers to hardware.

- The following are the Examiner's observations in regard thereto regarding the arguments to the rejections under 35 U.S.C. 102.

Applicant argues:

Referring to page 3 of Applicants' disclosure an SLA breach value, is the value against which trends and violations are calculated to determine whether or not the SLA has been breached. However, the SLA breach value, as recited in claim 1, is not the current SLA breach value. Instead, the SLA breach value is an estimate that is being proposed.

Examiner Responds:

Examiner is not persuaded by Applicants arguments. Examiner points to paragraphs [0047] – [0050] of Betge-Brezetz and specifically to the section which

describes the thresholds of the Service Level Agreement which are values against which violations of the SLA are identified.

Applicant argues:

However, Applicants are unclear as to where these cited passages specifically teach the claimed at least one SLA breach value estimation process. Specifically, Applicants are unclear where Betge-Brezetz specifically teaches that a breach value is estimated.

Examiner Responds:

Examiner is not persuaded by Applicants arguments. Examiner points to paragraphs [0047] – [0050] of Betge-Brezetz and specifically to the section which describes that the parameters of the SLA are estimated.

Applicant argues:

Upon reviewing these paragraphs, Applicants are unclear where Betge-Brezetz teaches the claimed SLA builder. Paragraph [0018] refers to a network management system and server is completely silent as to building SLAs. Although paragraph [0042] refers to generating network modification proposals, a network modification proposals is not comparable to a SLA.

Examiner Responds:

Examiner is not persuaded by Applicants arguments. Examiner points to paragraphs [0046] – [0048] where Betge-Brezetz discusses future service level agreements that will be created for future customers.

Applicant argues:

Although paragraph [0048] refers to future types of service level agreements, this is not comparable to a proposed SLA breach value setting. The remaining cited paragraphs are also silent as to the claimed limitations at issue. Thus, claim 3 further distinguishes the claimed invention over the applied prior art.

Examiner Responds:

Examiner is not persuaded by Applicants arguments. Examiner points to paragraphs [0045] – [0051] and [0066] – [0071] and more specifically to the proposal for future service level agreements it may enter with customers in the future.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this Office Action should be **faxed** to (571) 272-8300 or **mailed** to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Hand-delivered responses should be brought to
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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/Ninos Donabed/

Examiner, Art Unit 2144

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2144